

UNITED STATES DISTRICT COURT
SOTHERN DISTRICT OF NEW YORK

_____)	
DAN-DEE INTERNATIONAL, LTD.,)	
)	
Plaintiff,)	
v.)	Civil Action No. 08-CV-5540 (RPP)
)	
KB TOYS (US), INC., KB TOYS, INC.,)	
and A & T INDUSTRIAL, INC.,)	
)	
Defendants.)	
_____)	

ANSWER FOR
KB TOYS (US), INC. AND KB TOYS, INC.

Defendants KB Toys (US), Inc. and KB Toys, Inc. (collectively, “KB Toys” unless otherwise indicated), by and through its attorneys, hereby responds to the Complaint of Plaintiff Dan-Dee International, Ltd. (“Dan-Dee”) as follows:

1. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 1, and therefore denies the same.
2. KB Toys denies the allegations of paragraph 2. Further answering, KB Toys states that KB Toys, Inc. was formerly known as KB Toys (US), Inc.
3. KB Toys admits the allegations of paragraph 3.
4. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 4, and therefore denies the same.
5. KB Toys admits that it owns or operates retail stores within this Judicial District, but no answer is required to the remaining allegations contained in paragraph 5, which merely state conclusions of law.

6. No answer is required to the allegations contained in paragraph 6, which merely state conclusions of law.

7. No answer is required to the allegations contained in paragraph 7, which merely state conclusions of law.

8. No answer is required to the allegations contained in paragraph 8, which merely state conclusions of law.

9. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 9, and therefore denies the same.

10. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 10, and therefore denies the same.

11. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 11, and therefore denies the same.

12. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 12, and therefore denies the same.

13. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 13 and therefore denies the same.

14. KB Toys admits that Exhibit 1 purports to be copies of Copyright Registration No. VA 1-632-333 and the deposit copy of the Registration, but states it is otherwise without knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 14, and therefore denies the same.

15. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 15, and therefore denies the same.

16. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 16, and therefore denies the same.

17. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 17, and therefore denies the same.

18. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 18, and therefore denies the same.

19. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 19, and therefore denies the same.

20. KB Toys admits that Exhibit 2 purports to be a copy of a copyright application and a letter to the Copyright Office, but states it is otherwise without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 20, and therefore denies the same.

21. No answer is required to the allegations contained in paragraph 21, because it merely states Dan-Dee's purported future intent.

22. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 22, and therefore denies the same.

23. KB Toys admits that Exhibit 3 purports to be a photograph of a toy reindeer, but states it is otherwise without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 23, and therefore denies the same.

24. KB Toys is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 24, and therefore denies the same.

25. KB Toys admits that Exhibit 4 appears to contain photographs of toy reindeer, but states it is otherwise without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 25, and therefore denies the same.

26. KB Toys denies the allegations of paragraph 26.

27. KB Toys denies the allegations of paragraph 27.

28. KB Toys denies the allegations of paragraph 28.

29. KB Toys denies the allegations of paragraph 29.

30. KB Toys denies the allegations of paragraph 30.

31. KB Toys denies the allegations of paragraph 31.

FIRST AFFIRMATIVE DEFENSE

32. Dan-Dee is not entitled to any of the relief requested in the Complaint.

SECOND AFFIRMATIVE DEFENSE

33. KB Toys has not and does not directly or indirectly infringe any valid copyright of Dan-Dee.

THIRD AFFIRMATIVE DEFENSE

34. On information and belief, the design of any toy reindeer sold by KB Toys was not a copy of any toy reindeer designed or sold by Dan-Dee.

FOURTH AFFIRMATIVE DEFENSE

35. On information and belief, the design of any toy reindeer sold by KB Toys was not a result of access to any toy reindeer designed or sold by Dan-Dee.

FIFTH AFFIRMATIVE DEFENSE

36. On information and belief, the accused article was independently created.

SIXTH AFFIRMATIVE DEFENSE

37. The entity with the name “KB Toys (US), Inc.” is no longer in existence.

WHEREFORE, KB Toys respectfully requests that the Court deny Dan-Dee’s request for relief in its entirety and grant KB Toys its costs and attorneys’ fees and such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Nels T. Lippert

David B. Bassett

Nels T. Lippert

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Counsel for Defendants

KB Toys (US), Inc. and KB Toys, Inc.

Dated: September 5, 2008